

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)
)
ROGER LEE HOFFMAN) CASE NO. 03-11699
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on June 2, 2006

The motion to avoid the judicial liens of Arrow Financial Services, LLC¹ and Monogram Credit Card Bank of Georgia filed by the debtor on March 24, 2006 are DENIED, without prejudice, because the movant has failed to allege sufficient facts to state a cognizable claim for lien avoidance pursuant to §522(f)(1). See, In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested matters are required to state the grounds for relief “with particularity.” See, Fed. R. Bankr. P. Rule 9013.

Not every judicial lien upon exempt property may be avoided. Lien avoidance pursuant to §522(f)(1) is available only where the judicial lien impairs a claimed exemption. The concept of impairment was reduced to a mathematical formula by the amendments to §522(f) promulgated by the Bankruptcy Reform Act of 1994. 11 U.S.C. §522(f)(2)(A); In re Thomsen, 181 B.R. 1013, 1015 (Bankr. M.D. Ga. 1995). When the amount due on account of the liens sought to be avoided, all other liens on the property and the amount of the debtor’s exemption “exceeds the value that the debtor’s interest in the property would have in the absence of any liens” the debtor’s exemption is

¹Both the motion and the notice begin by alleging that the debtor wants to avoid the lien of Arrow Financial Services, LLC, but then, alleges that this lien is held by Monogram Credit Card Bank of Georgia. Presumably, something went awry in the completion of counsel’s forms, because the identity of the lienholder whose lien is sought to be avoided is not entirely clear.

impaired. 11 U.S.C. §522(f)(2)(A)(i) thru (iii). Thus, in order for the court to determine if a judgment lien impairs an exemption to which a debtor may be entitled, in addition to identifying the property subject to the judicial lien, the motion must provide information concerning the value of the property, the amount due on account of all liens against it, the amount of the liens to be avoided, and the amount of the exemption claimed by the debtor. 11 U.S.C. §522(f)(2)(A). See also, Thomsen, 181 B.R. at 1015-16.

While the debtor's motion states that he is entitled to avoid the liens, the motions do not provide any information concerning the value of the property, the amount due on any liens secured by the property, or any information concerning the amount of the exemption actually claimed by the debtor. Without this information the court does not have sufficient facts before it to determine whether the liens in question impair a claimed exemption. As such, the motions fail to state a cognizable claim for lien avoidance pursuant to §522(f)(1). Furthermore, the notices of the motions and opportunity to object do not comply with the local rules of this court, because the notices do not correctly state the date upon which the motions were filed, N.D. Ind. L.B.R. B-2002-2(c)(2), and the notices do not "contain a brief summary of the ground for the motion or have a copy of the motion attached to it." N.D. Ind. L.B.R. B-2002-2(c)(4). Although the notice states that a copy of the motion is attached to it, there is no attachment to the notice filed with the court. In addition to these problems, the court notes that neither the motions nor the notices of the opportunity to object to them were served upon the lienholders, but upon attorneys who have not filed an appearance in the bankruptcy. This is not appropriate. In re Rae, 286 B.R. 675 (Bankr. N.D. Ind. 2002).

Consequently, not only are the motions deficient, but creditors and parties in interest have not been given appropriate notice of the motions and the opportunity to object thereto.

IT IS THEREFORE ORDERED that the motions to avoid the judicial liens of Arrow Financial Services, LLC and Monogram Credit Card Bank of Georgia filed by the debtor on March 24, 2006, are denied, without prejudice.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court